

CHAPTER 2

EQUAL EMPLOYMENT OPPORTUNITY PRE-COMPLAINT PROCESSING

I. INTRODUCTION

A. Counseling Generally

The aggrieved person starts the equal employment opportunity (EEO) process by meeting with an EEO Counselor. (1) The Counselor plays a vital role in ensuring prompt and efficient processing of the formal complaint. This section of the Management Directive provides Commission guidance and procedures that EEO Counselors should follow when presented with both individual and class claims of discrimination. (2)

B. Full-Time Counselors

Agencies should use full-time EEO Counselors whenever possible. The employment and use of full-time EEO Counselors leads to the development of a professional corps of EEO Counselors who are better able to service the federal applicant and employee community. EEOC also encourages agencies to use the step-by-step guide at Appendix A to develop or refine its own counseling procedures.

C. EEO Counselor Training Requirements

Continuing education and training for employees working in federal sector EEO is vitally important to further the goals and objectives of equal employment opportunity. This Chapter establishes mandatory training requirements for Counselors.

D. ADR and EEO Counseling

Alternative dispute resolution (ADR) and EEO counseling are essential to achieving early resolution of the claim. The opportunity for informal resolution is important. ADR provides a means of improving the efficiency of the federal EEO complaint process by attempting early informal resolution of EEO disputes.

Aggrieved individuals who seek pre-complaint counseling must be fully informed of:

1. how the agency ADR program works;
2. the opportunity to participate in the program where the agency agrees to offer ADR in a particular case; and
3. the right to file a formal complaint if ADR does not achieve a resolution.

II. MANDATORY EEO COUNSELOR TRAINING REQUIREMENTS

A. Minimum Requirements

To ensure quality counseling throughout the federal sector, EEOC requires that new EEO Counselors receive a minimum of thirty-two (32) hours of EEO Counselor training prior to assuming counseling duties.

Individuals currently serving as Counselors may also benefit from such training. Agencies have the discretion to determine whether this training should be made available to current counseling staff. All EEO Counselors are required, however, to receive at least eight hours of continuing EEO counseling training every year.

EEOC has developed training courses to satisfy this requirement, and offers them to agencies through

the EEOC Revolving Fund Program on a fee-for-service basis. Agencies may also develop their own courses to satisfy this requirement, or contract with others to provide training, as long as the training meets the standards set forth by the Commission.

B. Initial Thirty-Two Hour Training for New EEO Counselors

New EEO Counselors must receive training in the following areas before an agency assigns them to provide EEO counseling to aggrieved persons:

1. an overview of the entire EEO process set forth under 29 C.F.R. Part 1614, emphasizing important time frames in the EEO process and providing an overview of counseling class complaints and analyzing fragmentation issues (see Chapter 5, Section III of this Management Directive for a discussion of fragmentation);
2. a review of the roles and responsibilities of an EEO Counselor, as described in this Chapter and in the Appendices to this Management Directive;
3. an overview of the statutes that EEOC enforces, including Title VII of the Civil Rights Act of 1964, as amended (Title VII), the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act of 1967, as amended (ADEA), and the Equal Pay Act of 1963 (EPA), explaining the theories of discrimination, including the disparate treatment, adverse impact, and reasonable accommodation theories, and providing more detailed instruction concerning class actions and issues attendant to fragmentation;
4. a review of the practical development of issues through role-playing or other practices designed to have attendees practice providing EEO counseling, including the initial in-take session with an aggrieved person; identifying claims; writing reports; and attempting resolution;
5. a review of other procedures available to aggrieved persons, such as the right to go directly to court under the ADEA; mixed case processing issues, including the right of election; class complaints processing issues; and the negotiated grievance procedure, including the right of election; and
6. an overview of the remedies, including compensatory damages, attorney's fees, and costs available to prevailing parties.

C. Continuing Training

All Counselors are required to receive at least eight hours of continuing Counselor training every year to keep EEO Counselors informed of developments in EEO practice, law, and guidance, as well as to enhance and develop counseling skills. Accordingly, agencies should conduct a needs assessment to determine specific areas for training. The Commission anticipates that this training will include segments on legal and policy updates, regulatory and statutory changes, and counseling skills development.

III. THE EEO COUNSELING PROCESS

The Roles and Responsibilities of an EEO Counselor

The Commission has developed a guide for EEO counseling that agencies may use in developing or refining their own procedures. (See Appendix A.) The Commission also recognizes that agencies use many forms of ADR.

Where an aggrieved person seeks EEO counseling, the Counselor must ensure that the complainant understands his/her rights and responsibilities in the EEO process, including the option to elect ADR. The EEO Counselor must perform several tasks in all cases, regardless of whether the individual ultimately elects the ADR option, including:

1. Advise the aggrieved person about the EEO complaint process under 29 C.F.R. Part 1614. The EEO counselor should explain the agency ADR program, indicating either that the program is available to the aggrieved individual or that the EEO counselor will advise the individual whether the program will be made available. The EEO Counselor further should explain that if the ADR program is available, the aggrieved individual will have to exercise an election option, and decide whether to seek pre-complaint

resolution through the ADR process or through the traditional EEO counseling process. In this regard, the EEO Counselor should inform the aggrieved individual about the differences between the two processes.

2. Determine the claim(s) and basis(es) raised by the potential complaint.
3. Conduct an inquiry during the initial interview with the aggrieved person for the purposes of determining jurisdictional questions. This includes determining whether there may be issues relating to the timeliness of the individual's EEO Counselor contact and obtaining information relating to this issue. It also includes obtaining enough information concerning the claim(s) and basis(es) so as to enable the agency to properly identify the legal claim raised if the individual files a complaint at the conclusion of the EEO counseling process.
4. Use of the term "initial interview" in this context is not intended to suggest that during the first meeting with the aggrieved person an EEO Counselor must obtain all of the information s/he needs to determine the claim(s) or basis(es). Nor does it mean that where the person decides to exercise his/her ADR option, the EEO Counselor is foreclosed from contacting the person to obtain such additional information as s/he needs for this specific purpose.
5. Seek a resolution of the dispute at the lowest possible level, unless the aggrieved person elects to participate in the agency's ADR program where the agency agrees to offer ADR in a particular case. If the dispute is resolved in counseling, the EEO Counselor must document the resolution.
6. Advise the aggrieved person of his/her right to file a formal discrimination complaint if attempts to resolve the dispute through EEO counseling or ADR fail to resolve the dispute.
7. Prepare a report sufficient to document that the EEO Counselor undertook the required counseling actions and to resolve any jurisdictional questions that arise.

IV. PROVIDING INFORMATION TO THE AGGRIEVED PERSON

A. Provide Required Written Notice

At the initial session or as soon as possible thereafter, the EEO Counselor must provide all aggrieved persons written notice of their rights and responsibilities. § 1614.105(b). The Commission has set forth this information in the "EEO Counselor Checklist," appended to the Management Directive in Appendix B.

B. Provide Information On Other Procedures as Required

Depending upon the facts and circumstances of the particular case, an aggrieved person may have options other than the Part 1614 procedure available in pursuit of a discrimination claim. The individual, in some cases, may have to elect the process s/he wishes to pursue. Election options apply in age discrimination complaints, mixed case complaints, Equal Pay Act complaints, and claims where certain negotiated grievance procedures apply. EEO Counselors must be familiar with these procedures and be able to identify such cases when the aggrieved person first seeks counseling. See Appendices C and D.(3) Other procedures apply where the complainant alleges sexual orientation discrimination.(4)

C. Statutes and Regulations

EEO Counselors must have a good working knowledge of the complaint processing regulations in Part 1614 and a familiarity with federal anti-discrimination statutes, including:

1. Title VII of the Civil Rights Act of 1964, as amended

Title VII prohibits discrimination based on race, color, religion, sex, and national origin. It also prohibits reprisal or retaliation for participating in the discrimination complaint process or for opposing any employment practice that the individual reasonably and good faith believes violates Title VII.

2. Age Discrimination in Employment Act of 1967, as amended (ADEA)

The ADEA prohibits discrimination in employment on the basis of age (40 years or older). It also prohibits retaliation against individuals exercising their rights under the statute. Unlike Title VII and

the Rehabilitation Act, the ADEA allows persons claiming age discrimination to go directly to court without going through an agency's administrative complaint procedures. If, however, a complainant chooses to file an administrative complaint, s/he must exhaust administrative remedies before proceeding to court. As with Title VII complaints, a complainant exhausts administrative remedies 180 days after filing a formal complaint or 180 days after filing an appeal with the Commission if the Commission has not issued a decision.

3.Rehabilitation Act of 1973, as amended

The Rehabilitation Act prohibits discrimination on the basis of mental and physical disabilities, as well as retaliation for exercising rights under the Act. The Rehabilitation Act requires that agencies make reasonable accommodations to the known physical or mental limitations of a qualified disabled applicant or employee unless the agency can demonstrate that the accommodations would impose an undue hardship on the operation of its program. (Congress amended the Rehabilitation Act of 1973 in October 1992 to provide that the standards used to determine whether non-affirmative action employment discrimination has occurred shall be the standards applied under Title I of the Americans With Disabilities Act. See § 503(b) of the Rehabilitation Act Amendments of 1992, Pub. L. No. 102-569, 106 Stat 4344 (October 29, 1992); 29 U.S.C. § 791(g).)

4.Fair Labor Standards Act of 1938, as amended (Equal Pay Act of 1963)(EPA)

The EPA prohibits sex-based wage discrimination. It prohibits federal agencies from paying employees of one sex lower wages than those of the opposite sex for performing substantially equal work. Substantially equal work means that the jobs require equal skills, effort, and responsibility, and that the jobs are performed under similar working conditions.(5) It also prohibits retaliation for exercising rights under the Act.

5.Commission Regulations, Guidelines, and Policy Directives

The Commission has issued regulations that address the application of federal nondiscrimination law to the federal government. The regulations governing the processing of federal sector discrimination complaints are contained in Title 29 of the Code of Federal Regulations (C.F.R.), Part 1614. The regulations set out the Counselor's obligations enumerated in Section II of this Chapter.

Other Commission regulations and guidelines address the substantive provisions of federal nondiscrimination law. For example, 29 C.F.R. Part 1630 sets forth Commission regulations applicable to the Rehabilitation Act. EEO Counselors should be familiar with Part 1630 in order properly to counsel individuals who present claims of disability discrimination.(6) The Commission also has issued enforcement guidance on discrete issues and areas of nondiscrimination law, such as "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," issued June 18, 1999; and "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act," issued March 1, 1999. These documents and others are available on the EEOC web site at "www.eeoc.gov" in the Enforcement Guidance and Related Documents section.

V.DETERMINE THE CLAIM(S) AND BASIS(ES) OF THE POTENTIAL COMPLAINT

A.Determining the Claim(s)

1.Fragmentation

The EEO Counselor plays a crucial role in the complaint process. As discussed in more detail in Chapter 5, Section III of this Management Directive, EEO counselors must assist the complainant in articulating the claim so as to avoid fragmenting the claim. EEO Counselors must review the materials set forth in Section III of Chapter 5 and become familiar with the concept of fragmentation to ensure the proper identification of the claims set forth in a request for EEO

counseling or in other documents that the EEO Counselor may prepare.

2. Identifying the claim(s)

At the initial interview, the Counselor must determine what action(s) the agency has taken or is taking that causes the aggrieved person to believe s/he is the victim of discrimination. This first step is essential to proceeding with the inquiry and resolution attempt and, if resolution is not achieved, essential to a focused investigation and hearing.

Before the Counselor begins the inquiry, s/he must be certain that the claim(s) are clearly defined and the aggrieved person agrees on how the agency defines the claim(s) that are to be the subject of the inquiry and subsequent attempts at resolution, whether through counseling or ADR. The Counselor must also determine, based on his/her understanding of the claims whether special procedures apply.

If a claim is like or related to a previously filed complaint, then the complaint should be amended to include that claim. If the claim is not like or related to a previously filed complaint, the claim should be processed as a separate complaint. Commission regulations require that agencies consolidate complaints for processing unless it is impossible to do so. See 1614.606. In a process set forth in Chapter 5, Section III.B of this Management Directive, a complainant shall be instructed to submit a letter to the agency's EEO Director or Complaints Manager (or a designee) describing the new incident(s) and stating that s/he wishes to amend his/her complaint to include the new incident(s). The EEO Director or Complaints Manager shall review the request and determine the correct handling of the amendment in an expeditious manner.

B. Determining the Basis(es)

The aggrieved person must believe s/he has been discriminated against on the basis of race, color, sex (including equal pay), religion, national origin, age (40 and over), disability, or in retaliation for having participated in activity protected by the various civil rights statutes. The EEO Counselor should determine if the aggrieved person believes that his/her problem is the result of discrimination on one or more of the bases.

C. When the Basis(es) is not Covered by the EEO Regulations

If it is clear that the aggrieved person's problem does not involve a basis(es) covered by the regulations, the EEO Counselor should inform the aggrieved person and, if possible refer him/her to an appropriate source. If the aggrieved person insists that s/he wants to file a discrimination complaint, the Counselor should issue the notice of final interview. Under no circumstance should the Counselor attempt to dissuade a person from filing a complaint.

VI. PROCEDURES UPON INITIATION OF EEO COUNSELING

A. Conducting the Inquiry

After the Counselor has determined the basis(es) and claims, s/he should conduct a limited inquiry. The purpose of the limited inquiry is to obtain information to determine jurisdictional questions if a formal complaint is filed and is performed regardless of whether the aggrieved person subsequently chooses ADR. The limited inquiry also is used to obtain information for settlement purposes if the person chooses EEO counseling over ADR or does not have the right to elect between EEO counseling and ADR.

While the scope of the inquiry will vary based on the complexity of the claims, the inquiry is limited and not intended to substitute for the fact finding required in the formal stage. The Counselor must at all times control the inquiry. If the aggrieved person or agency personnel raise objections to the scope or nature of the inquiry, the Counselor shall seek guidance and assistance from the EEO Officer. If the Counselor has problems with the inquiry, s/he should immediately notify the EEO Officer.

Appendix A includes suggested methods for conducting the inquiry. This guidance may be used to supplement established procedures.

B. Seeking Resolution

In almost all instances, informal resolution, freely arrived at by all parties involved in the dispute, is the best outcome of a counseling action. In seeking resolution, the Counselor must listen to and understand the viewpoint of both parties so that s/he is able to assist the parties in achieving resolution. The Counselor's role is to facilitate resolution, not develop or advocate specific terms of an agreement. The Counselor must be careful not to inject his/her views on settlement negotiations.(7)

Appendix A includes suggested methods for seeking resolution. This guidance may be used to supplement established agency procedures.

C. Resolution

1. Resolution of the Dispute

If during the course of the EEO Counselor's limited inquiry, the agency and the aggrieved person agree to an informal resolution of the dispute, the terms of the resolution should be reduced to writing and signed by both parties to help ensure that the agency and the aggrieved person have the same understanding of the terms of the resolution. The Commission recommends that the EEO Counselor, with the knowledge and guidance of the EEO Officer or Director, set forth the terms of the informal resolution in a letter transmitted to the parties. The letter should state clearly the terms of the informal resolution and should notify the aggrieved person of the procedures available under § 1614.504 in the event that the agency fails to comply with the terms of the resolution. Appendix E is a recommended format for the resolution agreement.

The EEO Counselor shall transmit a signed and dated copy to the EEO Officer. The EEO Officer shall retain the copy for one year or until s/he is certain that the agreement has been implemented.

2. Failure to Resolve the Dispute

The aggrieved person may not be satisfied with the agency's proposed resolution of the dispute, or the agency officials may not agree to the aggrieved person's suggestions. If informal resolution is not possible, the Counselor must hold a final interview with the aggrieved person within 30 days of the date the aggrieved person brought the dispute to the Counselor's attention, unless the aggrieved person consented to an extension of time, not to exceed 60 days. If the dispute is not resolved at the end of the extended time period, the Counselor must advise the aggrieved party in writing of his/her right to file a complaint.

The 30-day EEO counseling period (or as extended by agreement of the aggrieved party) commences when the aggrieved person first contacts the EEO Counselor or the appropriate agency office in which the EEO Counselor works and by exhibiting an intent to begin the EEO process. The unavailability of an EEO Counselor to meet with the aggrieved person for a period of time after such initial contact does not toll the 30-day counseling period. Absent agreement from the aggrieved person to extend the time period, the EEO counselor must issue the notice of final interview at the end of the 30-day period.

D. Issuing the Notice of Final Interview

During the final interview with the aggrieved person, the EEO Counselor should discuss what occurred during the EEO counseling process in terms of attempts at resolution. The Counselor must not indicate whether s/he believes the discrimination complaint has merit. Since EEO counseling inquiries are conducted informally and do not involve sworn testimony or extensive documentation, the Counselor 1) cannot make findings on the claim of discrimination, and 2) should not imply to the aggrieved person that his/her interpretation of the claims of the case constitutes an official finding of the agency on the claim

of discrimination. See Appendix F for a sample notice of final interview.

1.Right to Pursue the Claim Through the Formal Process

If the dispute has not been resolved to the satisfaction of the aggrieved person, the Counselor must tell the aggrieved person that s/he has the right to pursue the claim further through the formal complaint procedure. It is the aggrieved person, and not the EEO Counselor, who must decide whether to file a formal complaint of discrimination.

2.Requirements of the Formal Complaint

The Counselor must inform the aggrieved person that the complaint:

- a.Must be in writing;
- b.Must be specific with regard to the claim(s) that the aggrieved person raised in EEO counseling and that the complainant wishes to pursue;
- c.Must be signed by complainant or complainant's attorney; and
- d.Must be filed within fifteen (15) calendar days from the date s/he receives the notice of final interview. A postmark dated within the requisite 15 days will be evidence of timely filing.

3.Name(s) of Person(s) Authorized to Receive Complaints

The Counselor shall provide the aggrieved person with the names of persons authorized to receive complaints of discrimination. The Counselor shall inform the aggrieved person (or his/her representative) that the complaint must be mailed or personally delivered to one of the authorized persons.

4.File May Be Seen by Persons Needing Access and Any Confidentiality May Be Lost During Formal Process

The Counselor should explain that once the formal EEO complaint is filed, the complaint file, or part of it, may be shared with those who are involved and need access to it. This includes the EEO Officer, agency EEO officials, and possibly persons whom the aggrieved person has identified as being responsible for the actions that gave rise to the complaint. The identity of the aggrieved person does not remain confidential in the formal complaint process.

5.Provide the Aggrieved Person with a Written Notice of His/Her Right to File a Discrimination Complaint

- a.The notice must specify that an aggrieved person has 15 calendar days after receipt of the notice of final interview to file a formal complaint (including a class complaint).
- b.The notice must also advise the aggrieved person of the appropriate official with whom to file a complaint and of complainant's duty to inform the agency immediately when the complainant retains counsel or a representative.

6.The EEO Counselor must advise the complainant of his/her duty to inform the agency of a change of address if s/he should move during the pendency of the EEO process and the possible consequences for not doing so.

VII.PROCEDURES UPON ELECTION OF THE ADR PROGRAM

A.Election Between EEO Counseling and ADR

At the initial counseling session, or within a reasonable time thereafter as established by the agency, the aggrieved person must elect between having the dispute(s) about which s/he contacted the EEO Counselor handled through the agency's traditional EEO counseling procedures or handled through the agency's ADR procedure(s) where the agency agrees to offer ADR in the particular case. The election must be made in writing on a form developed by the agency and the form will be attached to the EEO Counselor's report discussed below. The aggrieved person's election to proceed through counseling or ADR is final.

B. Completing the ADR Process

Where the agency agrees to offer ADR in a particular case, and the aggrieved person elects the ADR procedure, the pre-complaint processing period shall be ninety (90) days. See § 1614.105(f). Once the aggrieved person elects ADR, the EEO Counselor should complete the intake functions of counseling (that is, obtaining the information needed to determine the basis(es), claim(s), and timeliness) before referring the dispute for ADR processing through procedures developed by the agency. Agencies are strongly encouraged to go outside the agency to obtain the services of a neutral for an ADR program. In the event that an agency uses one of its own employees as a neutral, it must assure the neutrality and impartiality of the neutral. If EEO Counselors are used as neutrals in an ADR program, an agency must assure that a Counselor never serve as a neutral in the same case in which he or she served as a Counselor. Furthermore, an agency may use EEO Counselors as ADR coordinators if, and only if, the EEO Counselors have received professional training in the agency's ADR program. Agencies should be aware that utilizing EEO Counselors as neutrals may create confusion, both with the aggrieved individual and the Counselor, as to what role the Counselor is playing in a particular case.⁽⁸⁾ Therefore, agencies should, wherever possible, designate certain individuals as either EEO Counselors or ADR neutrals, and in all cases agencies must clearly communicate to the aggrieved individual the role played by the EEO Counselor in his or her particular case. If the dispute is resolved during the ADR process, the resolution must be documented and the EEO Counselor informed of the resolution. If the dispute is not resolved within the 90-day period authorized for ADR, the agency's ADR coordinator, or other appropriate ADR official, will notify the EEO Counselor and the Counselor will issue the notice of right to file a discrimination complaint required by § 1614.105(d). See Section VI.D of this Chapter.

C. Filing of Complaint and Preparation of the EEO Counselor's Report Where ADR Fails

When advised that an aggrieved person has filed a formal complaint, the EEO Counselor initially contacted by the aggrieved person will submit a written report pursuant to § 1614.105(c). The report will contain relevant information about the aggrieved person, jurisdiction, claims, bases, requested remedy, and the Counselor's checklist as specified in the sample EEO Counselors Report in Appendix G to this Management Directive. The report need not provide, however, a summary of the informal resolution attempt other than to indicate that the aggrieved person elected either traditional EEO counseling or the ADR program and that the dispute was not resolved through either procedure.

VIII. THE COUNSELOR'S REPORT

A. Time Limits

The Counselor must submit to the office designated to accept formal complaints and to the complainant the report of inquiry. This must be done within fifteen (15) days after notification by the EEO Officer or other appropriate official that a formal complaint has been filed. It is essential that the Counselor maintain his/her record of counseling so that this regulatory time limit is met.

B. Contents of Report

The report must include:

1. A precise description of the claim(s) and the basis(es) identified by the complainant;
2. Pertinent documents gathered during the inquiry, if any;
3. Specific information bearing on timeliness of the counseling contact;
4. If timeliness appears to be a factor, an explanation for the delay; and
5. An indication as to whether an attempt to resolve the complaint was made.

The agency should also retain a copy of the Counselor's report for availability in the event that the original Counselor's report, submitted to the office designated to accept formal complaints, is lost or misplaced. All notes, drafts and other records of counseling efforts will be maintained by the agency after counseling is completed for a period extending to four years after resolution of the case.

Appendix G is a recommended format for a Counselor's report.

C. Confidentiality of Negotiations for Resolution or ADR

In order to facilitate resolution attempts, all parties involved in resolution must be free to explore all avenues of relief. Offers and statements made by parties cannot be used against either party if resolution attempts fail. The Counselor will not report any discussions that occur during negotiations for resolution.

IX. COUNSELING CLASS ACTION COMPLAINTS

Occasionally, an EEO Counselor may need to provide EEO counseling to an aggrieved person or group of individuals seeking to represent a class of persons.⁽⁹⁾ A class is defined as a group of employees, former employees, or applicants who alleged that they have been or are being adversely affected by an agency personnel policy or practice that discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or disability. See § 1614.204; see also Chapter 8 of this Management Directive for further guidance.

The aggrieved person(s) comes to the EEO Counselor as a class agent representing the group. A class inquiry must be brought to the attention of an EEO Counselor by a class agent within forty-five (45) calendar days of the date when the specific policy or practice adversely affected the class agent or, if a personnel action, within 45 days of the effective date of that action.

The EEO counseling requirements for class claims are the same as those for individual claims of discrimination, but the facts must be framed to meet the requirements of § 1614.204.

It is strongly recommended that, if class allegations are raised or an individual approaches an EEO Counselor as a class agent for counseling, the EEO Counselor immediately contact the EEO Officer, or designated person, for advice and guidance.

1. The Commission consistently has held that a complainant may satisfy the criterion of EEO Counselor contact by initiating contact with any agency official logically connected with the EEO process, even if that official is not an EEO Counselor, and by exhibiting an intent to begin the EEO process. See *Kinan v. Department of Defense*, EEOC Request No. 05990249 (May 6, 1999); *Floyd v. National Guard Bureau*, EEOC Request No. 05890086 (June 22, 1989).
2. All time frames set out in this Management Directive are stated in calendar days unless otherwise indicated.
3. See Chapter 4, Section III.A, of this Management Directive, for additional guidance on the election process applicable to mixed case complaints.
4. The EEOC does not have jurisdiction over claims of sexual orientation discrimination. Federal agencies are barred from discriminating on this basis under Executive Order 11478, as amended by Executive Order 13087 (May 28, 1998), and individuals alleging discrimination on this basis should consult with appropriate agency EEO or personnel officials to determine how to process such claims. Individuals also may seek guidance from the Office of Personnel Management.
5. Sex-based claims of wage discrimination may also be raised under Title VII; individuals so aggrieved may thus claim violations of both statutes simultaneously. EPA complaints are processed under Part 1614. In the alternative, an EPA complainant may go directly to a court of competent jurisdiction on the EPA claim.
6. The Commission has issued guidelines covering all of the substantive bases of prohibited discrimination. EEO Counselors should be familiar with 29 C.F.R. Part 1604 (Guidelines on Sex Discrimination) and Appendix to Part 1604, (Questions and Answers on the Pregnancy Discrimination Act); Part 1605 (Guidelines on Religious

Discrimination); Part 1606 (Guidelines on National Origin Discrimination); Part 1620 (The Equal Pay Act); and Part 1625 (the Age Discrimination in Employment Act).

7. As noted in Appendix B, at point "b," the EEO Counselor acts as a neutral and not as an advocate for either the aggrieved person or the agency. When the aggrieved person seeks advice from the EEO Counselor, the Counselor should remind him/her of the right to representation.

8. EEO Counselors serving as ADR neutrals should be aware of the obligations imposed on neutrals by the Administrative Dispute Resolution Act of 1996. See Chapter 3, Section IV of this Management Directive.

9. This need may arise in the course of counseling an individual where the EEO Counselor identifies allegations of class discrimination.

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